

These are the tentative rulings for civil law and motion matters set for Thursday, July 31, 2014, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, July 30, 2014. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, www.placer.courts.ca.gov.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY **THE HONORABLE CHARLES D. WACHOB** AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN **DEPARTMENT 42**, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. M-CV-0060326 DLJ Mortgage Capital, Inc. vs. Fisher, Robert C., Jr., et al

The motion for temporary restraining order is continued, on the court's own motion, to August 7, 2014 at 8:30 a.m. in Department 43 to be heard by the Honorable Michael W. Jones. The court apologizes to the parties for any inconvenience.

2. M-CV-0061478 U.S. Bank Trust, N.A. vs. Bracken, Theresa A.

The motion for summary judgment is dropped from the calendar. The court is informed that the case was removed to federal court on July 23, 2014.

3. S-CV-0024808 Gonero, Alex vs. Union Pacific Railroad Co., et al

This tentative ruling is issued by the Honorable Jeffrey S. Penney. Oral argument shall be held at 1:30 p.m. in Department 44:

The appearances of the parties are required on plaintiff's Motion for New Trial/Additur/Judgment Notwithstanding the Verdict; defendant's Motion for Judgment Notwithstanding the Verdict; and defendant's Motion to Tax Costs. Oral argument shall not exceed 10 minutes for each side, with a 5 minute rebuttal for the respective moving parties, per motion.

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4. S-CV-0028480 Martel, Richard S. vs. Litchfield, Robert L.

The demurrer is continued, on the court's own motion, to August 21, 2014 at 8:30 a.m. in Department 43 to be heard by the Honorable Michael W. Jones. The court apologizes to the parties for any inconvenience.

5. S-CV-0029262 Karr, William G. vs. Leep, Inc. et.al.

The motion for attorney's fees is dropped from the calendar as no moving papers were filed with the court.

6. S-CV-0030828 Crowder, Asia vs. Squaw Valley Preserve, Inc., et al

The OSC re the Post Judgment Final Hearing is continued to October 2, 2014 at 8:30 a.m. in Department 43 at the request of the moving party.

7. S-CV-0030874 Powers, Craig vs. East West Partners-Tahoe, Inc.

The four pending motions are continued, on the court's own motion, to August 21, 2014 at 8:30 a.m. in Department 40. The court apologizes to the parties for any inconvenience.

8. S-CV-0031362 Encompass Insurance Co. vs. Placer County Water Agency

Defendant Placer County Water Agency's (PCWA) unopposed Motion for Leave to Amend Answer is granted. The court may permit a party to amend its operative pleading in the furtherance of justice and on such terms as may be just. (*Code of Civil Procedure section 473(a)(1); Code of Civil Procedure section 576.*) Courts have broad discretion in granting leave to amend a pleading and such discretion is usually exercised liberally to permit amendment to the pleading. (*Howard v. County of San Diego (2010) 184 Cal.App.4th 1422, 1428.*) The moving party must show, however, that the amendment will not prejudice any opposing party. (*Douglas v. Superior Court (1989) 215 Cal.App.3d 155, 158.*) After careful review of the moving papers and supporting declarations, the court finds that PCWA has sufficiently established the proposed amended answer will not prejudice plaintiff and shall permit PCWA leave to file an amended answer adding the twenty-fourth affirmative defense alleging negligence per se.

PCWA shall file and serve its amended answer on or before August 11, 2014.

9. S-CV-0031634 Carta, Lia vs. Howard, Elvira

The motion for terminating sanctions and the motion to compel are continued, on the court's own motion, to August 7, 2014 at 8:30 a.m. in Department 40. The court apologizes to the parties for any inconvenience.

10. S-CV-0033566 Thornton, Robert, et al vs. East West Partners, Inc., et al

The motion for class certification is continued to September 16, 2014 at 8:30 a.m. in Department 40 at the request of the moving party.

11. S-CV-0033606 Bowman, Cynthia vs. Ashford, Nina

The motion to deem request for admissions admitted is dropped from the calendar at the request of the moving party.

12. S-CV-0034268 Selwyn D.J. Vos vs. Reconstuct Company, N.A.

The demurrer is continued, on the court's own motion, to August 21, 2014 at 8:30 a.m. in Department 43 to be heard by the Honorable Michael W. Jones. The court apologizes to the parties for any inconvenience.

13. S-CV-0034296 U.S. Bank, N.A. vs. NNN Parkway Corporate Plaza, LLC, et al

The Receiver's Motion for Allowance of Counsel's Interim Fees is continued, on the court's own motion, to August 14, 2014 at 8:30 a.m. in Department 40. The court apologizes to the parties for any inconvenience.

14. S-CV-0034469 Joslin, Garret A. - In Re the Petition of

The appearances of the parties are required for the hearing.

The petition for appointment of guardian ad litem is denied.

The only petition for appointment of a guardian ad litem presented by petitioner was filed April 4, 2014, and sought appointment of a guardian ad litem under section 1003 of the Probate Code. That section provides:

The court may . . . appoint a guardian ad litem at any stage of a proceeding under this code to represent the interests of any of the following persons, if the court determines that representation of the interest other would be inadequate:

(1) A minor. . . .

The April 4, 2014, petition was denied by the court April 14, 2014, because there is no proceeding under the Probate Code in the file.

Even if the court had not previously denied the petition, it would still be denied. As indicated above, appointment of a guardian ad litem is not authorized under the Probate Code unless a proceeding under the Probate Code is pending before the court. Likewise, appointment of a guardian ad litem under the Code of Civil Procedure is not

authorized unless the person to be represented (here, minor Garret A. Joslin) "is a party [to an] action or proceeding" before the court. Code of Civil Procedure section 372(a).

The paperwork filed by petitioner—consisting of the previously denied petition, a civil case cover sheet, a notice of hearing, and the declaration of counsel—cannot be construed as a petition for appointment of guardian of the estate under Probate Code section 1500 et seq.; as a petition for relief under the California Uniform Transfers to Minors Act under section 3900 et seq.; as a petition relief under the California Multiple-Party Accounts Law under section 5100 et seq.; or as a petition for relief under Probate Code section 3400 et seq. Any relief under those sections is likewise denied.

15. S-CV-0034470 Joslin, Airiana G. - In Re the Petition of

The appearances of the parties are required for the hearing.

The petition for appointment of guardian ad litem is denied.

The only petition for appointment of a guardian ad litem presented by petitioner was filed April 4, 2014, and sought appointment of a guardian ad litem under section 1003 of the Probate Code. That section provides:

The court may . . . appoint a guardian ad litem at any stage of a proceeding under this code to represent the interests of any of the following persons, if the court determines that representation of the interest other would be inadequate:

(1) A minor. . . .

The April 4, 2014, petition was denied by the court April 14, 2014, because there is no proceeding under the Probate Code in the file.

Even if the court had not previously denied the petition, it would still be denied. As indicated above, appointment of a guardian ad litem is not authorized under the Probate Code unless a proceeding under the Probate Code is pending before the court. Likewise, appointment of a guardian ad litem under the Code of Civil Procedure is not authorized unless the person to be represented (here, minor Airiana G. Joslin) "is a party [to an] action or proceeding" before the court. Code of Civil Procedure section 372(a).

The paperwork filed by petitioner—consisting of the previously denied petition, a civil case cover sheet, a notice of hearing, and the declaration of counsel—cannot be construed as a petition for appointment of guardian of the estate under Probate Code section 1500 et seq.; as a petition for relief under the California Uniform Transfers to Minors Act under section 3900 et seq.; as a petition relief under the California Multiple-Party Accounts Law under section 5100 et seq.; or as a petition for relief under Probate Code section 3400 et seq. Any relief under those sections is likewise denied.

The demurrer to the complaint is dropped from the calendar. A first amended complaint was filed on July 25, 2014.

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